STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

UNIVERSITY PROFESSIONAL AND TECHNICAL EMPLOYEES, CWA, LOCAL 9119 AND DEBORAH J. ANISMAN, et al.,	)	
Charging Parties,	)	Case No. LA-CE-389-H
v.	)	PERB Decision No. 1055-H
REGENTS OF THE UNIVERSITY OF CALIFORNIA,	)	September 12, 1994
Respondent.	)	

Appearances: Van Bourg, Weinberg, Roger & Rosenfeld by James Rutkowski, Attorney, for University Professional and Technical Employees, CWA, Local 9119; and Deborah J. Anisman, et al.; Edward M. Opton, Jr., Attorney, for Regents of the University of California.

Before Blair, Chair; Caffrey and Johnson, Members.

DECISION AND ORDER

JOHNSON, Member: This case is before the Public Employment Relations Board (Board) on appeal by the University Professional and Technical Employees, CWA, Local 9119 and Deborah J. Anisman, et al. (Charging Parties) of a Board agent's dismissal (attached) of the unfair practice charge filed against the Regents of the University of California (University). Charging Parties allege that the University unilaterally reduced salaries without notice in violation of section 3571(a) and (b) of the Higher Education Employer-Employee Relations Act (HEERA).[1] The charge was

[1]HEERA is codified at Government Code section 3560 et seq. HEERA section 3571(a) and (b) state, in pertinent part:

> It shall be unlawful for the higher education employer to do any of the following:

dismissed for failing to state a prima facie case.

The Board has reviewed the entire record in this case, including the individual charges (Deborah J. Anisman et al.), the warning and dismissal letters, the Charging Parties' appeal of dismissal and the University's reply to the appeal. The Board finds the warning and dismissal letters to be free of prejudicial error and adopts them as the decision of the Board itself.

The unfair practice charge in Case No. LA-CE-389-H is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chair Blair and Member Caffrey joined in the Decision.

> (a) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter.
>
> (b) Deny to employee organizations rights guaranteed to them by this chapter.

STATE OF CALIFORNIA PETE WILSON, *Governor*

PUBLIC EMPLOYMENT RELATIONS BOARD

Los Angeles Regional Office
3630 Wilshire Blvd., Suite 650
Los Angeles, CA 90010-2334
(213) 736-3127

March 29, 1994

Cliff Fried
1015 Gayley Avenue, Suite 115
Los Angeles, CA 90024

RE: DISMISSAL AND REFUSAL TO ISSUE COMPLAINT, Unfair Practice Charge No. LA-CE-389-H, University Professional and Technical Employees. CWA Local 9119. and Deborah J. Anisman et al. v. Regents of the University of California

Dear Mr. Fried:

In the above-referenced charge, the University Professional and Technical Employees, CWA Local 9119 (UPTE) and Deborah J. Anisman et al. allege that the Regents of the University of California (University) changed salaries without notice. This conduct is alleged to violate Government Code sections 3571(a) and (b) of the Higher Education Employer-Employee Relations Act (HEERA).

I indicated to you, in my attached letter dated March 10, 1994, that the above-referenced charge did not state a prima facie case. You were, advised that, if there were any factual inaccuracies or additional facts which would correct the deficiencies explained in that letter., you should amend the charge. You were further advised that, unless you amended the charge to state a prima facie case or withdrew it prior to March 18, 1994, the charge would be dismissed. I later extended the deadline to March 25, 1994.

On March 25, 1994, I received from you a first amended charge. The amended charge emphasizes that Charging Parties were not given notice that many other employees would be exempted from the salary cut. There appears to be no legal requirement, however, that the University notify Charging Parties that it would or would not change the employment conditions of other employees. Under Regents of the University of California v. Public Employment Relations Board (1985) 168 Cal.App.3d 937 [214 Cal.Rptr. 698], Charging Parties were entitled to notice that the University proposed to change Charging Parties' own employment conditions. As indicated in my March 10 letter, Charging Parties did receive such notice. I am therefore dismissing the charge, based on the facts and reasons contained in this letter and my March 10 letter.

Right to Appeal

Pursuant to Public Employment Relations Board regulations, you may obtain a review of this dismissal of the charge by filing an appeal to the Board itself within twenty (20) calendar days after service of this dismissal. (Cal. Code of Regs., tit. 8, sec. 32635(a).) To be timely filed, the original and five copies of such appeal must be actually received by the Board itself before the close of business (5 p.m.) or sent by telegraph, certified or Express United States mail postmarked no later than the last date set for filing. (Cal. Code of Regs., tit. 8, sec. 32135.) Code of Civil Procedure section 1013 shall apply. The Board's address is:

Public Employment Relations Board
1031 18th Street
Sacramento, CA 95814

If you file a timely appeal of the refusal to issue a complaint, any other party may file with the Board an original and five copies of a statement in opposition within twenty (20) calendar days following the date of service of the appeal. (Cal. Code of Regs., tit. 8, sec. 32635(b).)

Service

All documents authorized to be filed herein must also be "served" upon all parties to the proceeding, and a "proof of service" must accompany each copy of a document served upon a party or filed with the Board itself. (See Cal. Code of Regs., tit. 8, sec. 32140 for the required contents and a sample form.) The document will be considered properly "served" when personally delivered or deposited in the first-class mail, postage paid and properly addressed.

Extension of Time

A request for an extension of time, in which to file a document with the Board itself, must be in writing and filed with the Board at the previously noted address. A request for an extension must be filed at least three (3) calendar days before the expiration of the time required for filing the document. The request must indicate good cause for and, if known, the position of each other party regarding the extension, and shall be accompanied by proof of service of the request upon each party. (Cal. Code of Regs., tit. 8, sec. 32132.)

Final Date

If no appeal is filed within the specified time limits, the dismissal will become final when the time limits have expired.

Sincerely,

ROBERT THOMPSON
Deputy General Counsel

By _____
THOMAS J. ALLEN
Regional Attorney

Attachment

cc: Edward M. Opton, Jr., Esq.

STATE OF CALIFORNIA PETE WILSON, *Governor*

PUBLIC EMPLOYMENT RELATIONS BOARD

Los Angelas Regional Office
3530 Wilshire Blvd., Suite 650
Los Angeles, CA 90010-2334
(213)736-3127

March 10, 1994

Cliff Fried
1015 Gayley Avenue, Suite 115
Los Angeles, CA 90024

RE: WARNING LETTER, Unfair Practice Charge No. LA-CE-389-H, University Profeasional and Technical Employees, CWA Local 9119, and Deborah J. Anisman et al., v. Regents of the University of California

Dear Mr. Fried:

In the above-referenced charge, the University Professional and Technical Employees, CWA Local 9119 (UPTE) and Deborah J. Anisman et al. allege that the Regents of the University of California (University) changed salaries without notice. This conduct is alleged to violate Government Code sections 3571(a) and (b) of the Higher Education Employer-Employee Relations Act (HEERA).

My investigation of the charge reveals the following relevant facts.

The individual charging parties are University employees in bargaining units for which there is no exclusive representative. UPTE is their nonexclusive representative.

An article in the April/May 1993 issue of UC Focus, published for University faculty and staff by the Office of the President, stated that the Regents had adopted a budget-cutting plan that included a 5% "across-the-board" one-year salary cut for faculty and staff. The President was quoted as saying, "If reasonable alternatives can be developed, and if state funding is not further reduced for next year, a revised recommendation will be presented to the Regents." The Article also stated that the Regents "expressed hope that other alternatives could be found."

It is not apparent from the charge whether charging parties requested discussions of the proposed cut or the alternatives, or whether any such discussions took place, prior to July 1, 1993.

Without further notice to employees, the University implemented a salary cut on July 1, 1993. The cut was 3.5% rather than 5%, and it was not "across-the-board" as several classes of employees (particularly in the areas of nursing, health care, patient care, and skilled crafts) were exempt. It

does not appear that any employees represented by UPTE were exempted.

Based on the facts stated above, the charge does not state a prima facie violation of the HEERA, for the reasons that follow.

In Regents of the University of California v. Public Employment Relations Board (1985) 168 Cal.App.3d 937, 945 [214 Cal. Rptr. 698], the court defined as follows the practices satisfying the University's duty toward its nonexclusively represented employees:

> Under these practices, the University notifies individual employees of proposed changes in employment conditions and, if the employee chooses to have his or her union meet with the employer to discuss the changes, such meetings are held upon request.

After providing such notice and opportunity for discussion, the University may implement the changes.

In requiring only notice and opportunity to "discuss," the court recognized that nonexclusively represented employees have lesser rights than exclusive representatives, which have a right to "negotiate," to agreement or through the completion of impasse procedures, before the implementation of changes. The court did not define how specific the notice to nonexclusively represented employees must be in order to make their right to request discussions meaningful, nor did the court state whether the changes as implemented must be identical to the changes as proposed, or whether the University must provide additional notice of any modifications in its proposal.

It would seem illogical to require that the changes as implemented be identical to the changes as proposed. Such a requirement would defeat the very purpose of notice and discussion: to give employees the opportunity to modify by their input what the University proposes to do. Furthermore, a requirement of additional notice to employees of every modification in the University's proposal would extend the process and discourage employer flexibility, without necessarily enhancing the opportunity for meaningful employee input.

The University should therefore have some latitude in modifying its proposed changes without giving additional notice. Employers do have latitude even in their dealings with exclusive

representatives. Under Modesto City Schools (1983) PERB Decision No. 291, at p. 46, an employer may make post-impasse unilateral changes without further notice, and the changes as implemented need not be exactly those offered to the exclusive representative during negotiations, so long as the changes are "reasonably comprehended" within the pre-impasse proposals. (Without this latitude, the impasse procedures would be limited in their ability to facilitate modifications in the employer's proposals.) Given the lesser rights of nonexclusively represented employees, an employer like the University should have greater latitude in implementing unilateral changes that affect its nonexclusively represented employees.

The notice required to be given to employees should be notice sufficient to allow the employees to determine whether or not to request discussions. In the present case, the University gave notice that it was proposing a 5% across-the-board salary cut but was hoping for "alternatives." The obvious less drastic alternatives to a 5% across-the-board salary cut would be (l) a cut of less than 5%, (2) a cut that is not across-the-board, or (3) some combination of the two. The University's notice would appear to be sufficient to allow employees to determine whether or not to request discussions of the proposed cut or of these obvious less drastic alternatives, and the cut as implemented would appear to be reasonably within the scope of the notice.

UPTE argues that the present case is parallel to Regents of the University of California (1990) PERB Decision No 842, in which the University unilaterally and unlawfully implemented split payment of merit increases. In that case, however, the University never clearly notified employees that split payment was a distinct possibility; in fact, the employees were left with the impression that split payment would not occur. The employees thus had no reason, and no fair opportunity, to request discussions of split payment before implementation. In the present case, in contrast, the University gave clear notice of the proposed 5% across-the-board cut. Faced with such a cut, the employees had every apparent reason to request discussions of the proposal and of the obvious less drastic alternatives. The fact that the University ultimately did implement a less drastic alternative does not mean that the employees were deprived of a fair opportunity to request discussions.

For these reasons the charge, as presently written, does not state a prima facie case. If there are any factual inaccuracies in this letter or additional facts which would correct the deficiencies explained above, please amend the charge. The

amended charge should be prepared on a standard PERB unfair practice charge form, clearly labeled First Amended Charge, contain all the facts and allegations you wish to make, and be signed under penalty of perjury by the charging party. The amended charge must be served on the respondent and the original proof of service must be filed with PERB. If I do not receive an amended charge or withdrawal from you before March 18, 1994, I shall dismiss your charge. If you have any questions, please call me at (213) 736-3127.

Sincerely,

Thomas J. Allen
Regional Attorney